

DEPARTMENT OF THE INTERIOR

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination That *Ancistrocactus tobuschii* is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Ancistrocactus tobuschii* W. T. Marshall ex Backeberg (Tobusch fishhook cactus), a native plant of Texas, to be an Endangered species. Removal of plants and reduction of its range by such natural processes as flooding and stream bank erosion have led to the species' decline. This cactus, occurring on gravel bars in stream channels and on banks, was very greatly reduced by the 100-year flood of August, 1978, so that no more than 200 plants are known to survive in the wild.

This action will extend the protection provided by the Endangered Species Act of 1973, as amended, to this plant.

DATE: This rulemaking becomes effective on December 7, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John Spinks, Chief—Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 703/235-1975.

SUPPLEMENTARY INFORMATION:**Background**

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant taxa to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered to be endangered, threatened, or extinct. On July 1, 1975, the Director published a notice in the *Federal Register* (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within, as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the *Federal Register* (41 FR 24523-24572) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution

and the Service in response to House Document No. 94-51 and the above mentioned *Federal Register* publication. *Ancistrocactus tobuschii* was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal.

Public hearings on the June 16, 1976, proposal were held on July 22, 1976, in El Segundo, California and on July 28, 1976, in Kansas City, Missouri. A second public hearing was held on July 9, 1979, in Austin, Texas for seven Texas cacti proposed as endangered species, including *Ancistrocactus tobuschii*.

In the June 24, 1977, *Federal Register*, the Service published a final rulemaking (42 FR 32372-32381, codified at 50 CFR) detailing the permit regulations to protect Endangered and Threatened plant species. These rules establish prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

Note.—The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis, under Executive Order 12044 and 43 CFR Part 14.

Summary of Comments and Recommendations

In keeping with the intent of Section 4(b)(1)(C) of the Act, a summary of all comments and recommendations received are here published in the *Federal Register* prior to adding any plant species to the List of Endangered and Threatened Wildlife and Plants.

Hundreds of comments on the general proposal of June 16, 1976 were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature in that they did not address individual plant species. Most comments addressed the program or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, *Federal Register* publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916). Some of these comments addressed cacti and urged their conservation. Only one comment specific to this species was received; the U.S. Department of Agriculture suggested the common name "fishhook cactus".

A number of parties who commented on the June 7, 1976, proposed prohibitions and permit provisions for plants (41 FR 22915) also addressed cacti. These comments are summarized in the June 24, 1977, *Federal Register* (43 FR 17909-17916), the final plant permit regulations discussed above. One comment specific to *Ancistrocactus*

tobuschii was received during this official comment period from a cactus grower who wanted to see no restrictions on the sale and exchange of seeds and of plants propagated in captivity. Under the current plant regulations, permits are available for the enhancement or propagation of species.

The Governor of Texas was notified of this proposed action. The Governor submitted no comments on the proposed action, nor did the State Conservation Agency. Botanists have submitted information on this species since the close of the official comment period. In a letter dated February 17, 1977, Dr. Lyman Benson of Pomona College commented that *Ancistrocactus tobuschii* was one of the most important species requiring protection of those proposed for protection due to its narrow endemism.

On July 9, 1979, a second public hearing was held in Austin, Texas, and the comment period was officially reopened (July 2 through July 23, 1979). The Governor of Texas was again notified of the proposal to list *Ancistrocactus tobuschii* as an Endangered species, but again submitted no comments on the proposed action. One written comment specific to *Ancistrocactus tobuschii* was received in the July 1979 comment period. The El Paso Cactus and Rock Club favored listing this species as Endangered. At the July 9, 1979, public hearing in Austin, Texas, Del Weniger, chairman of the Biology Department at Our Lady of the Lake University in San Antonio, commented on the natural history and distribution of *Ancistrocactus tobuschii*. He recommended it be final—listed as endangered because "it is one of the rarest and most greatly reduced in numbers of any plant in the state". He also detailed threats to the species from collecting and habitat destruction.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Ancistrocactus tobuschii* W. T. Marshall ex Backeberg (Tobusch fishhook cactus; synonyms: *Mammillaria tobuschii*, *Echinocactus tobuschii*) is in danger of becoming extinct within the foreseeable future throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their applications to *Ancistrocactus tobuschii* are as follows:

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, this species occurred in several scattered

localities in the Balcones Canyonlands. Now, this cactus is known from only a few locations in northern Bandera County and western Kerr County, Texas. In the past, habitat destruction has occurred as a result of natural processes, such as flooding and stream bank erosion. This species is also very vulnerable to any change in stream flow or any activity affecting the drainage of these streams. The Edwards Underground Water District is promoting and building recharge dams on streams in the general area. One such project has been projected for the Sabinal River, but it is downstream from the sites. Water agencies dealing with projects on these streams should consider the presence of *Ancistrocactus tobuschii*. Also, the State of Texas recently acquired a large ranch which included the upper part of the Sabinal River for development as a new state park. This development, which could affect drainage, should be managed so as to protect the downstream populations of this species.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Collection is a major threat to the survival of this species. Collectors are attracted by the rarity of this cactus. The species appears to have been eliminated from its type locality (locale from which the species was originally described), by collectors. Publishing locational information would probably result in the quick removal of all plants by commercial collectors.

(3) *Disease or predation* (including grazing). *Ancistrocactus tobuschii* occurs in areas now being grazed. The present level of grazing does not seem to affect the species. Increased grazing by goats during the wet season of the year when the plants are emergent could cause physical damage to the cacti (inflicted by the goats' hooves).

(4) *The inadequacy of existing regulatory mechanisms.* There currently exist no State or Federal laws protecting this species or its habitat. All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However, this Convention only regulates export of the species, and therefore does not regulate internal trade in the cactus, or habitat destruction. No other Federal protective laws currently apply to it.

(5) *Other natural or man-made factors affecting its continued existence.* Restriction to a very specialized and localized habitat in a small geographical area, and the susceptibility of this habitat to destruction through natural processes of erosion and flooding and a very low total population level (no more

than 200 plants in the wild) with a resultant restricted gene pool are all factors which tend to intensify the threat to this plant. Lack of seedlings in the wild populations is another problem for this species. Small seedlings have not been observed since 1952; this is definitely a factor in the rapid decline of this species over the past 27 years.

Effects of the Rulemaking

Section 7(a) of the Act as amended provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, ensure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an 'agency action') does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of section 7 of the Endangered Species Act Amendments of 1978.

Provisions for Interagency Cooperation were published on January 4, 1978, in the *Federal Register* (43 FR 870-876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. This rulemaking requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this taxon.

Endangered and Threatened species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all such species. The regulations which pertain to Endangered plant species are found at §§ 17.61-17.63 and are summarized below.

All provisions of section 9(a)(2) of the Act, as implemented by § 17.61 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the *Federal Register* of June

24, 1977 (42 FR 32372-32381) codified in 50 CFR Part 17, provide for the issuance of permits under certain circumstances to carry out otherwise prohibited activities involving Endangered plants, such as trade in specimens of cultivated origin.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora which requires a permit for export of the taxon. The Service will review *Ancistrocactus tobuschii* to determine whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy

An Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

At the time any such regulation to determine a species to be an Endangered or Threatened species is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

Ancistrocactus tobuschii has already been reduced in numbers and is threatened by taking, an activity not prohibited by the Endangered Species Act of 1973 for plants. Publication of critical habitat maps would make this species more vulnerable to taking and therefore it would not be prudent to determine critical habitat.

Ancistrocactus tobuschii was proposed on June 16, 1976 (41 FR 24536), and since critical habitat is not being determined for this species, none of the other amended subsections are applicable. Accordingly, the Service is proceeding at this time with a final rulemaking to determine this species to be Endangered pursuant to the Endangered Species Act of 1973, as amended. This rule is issued under the authority contained in the Endangered

Species Act (16 U.S.C. 1531-1543, 87 Stat. 884).

The primary author of this rule is Ms. Rosemary Carey, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. (703/235-1975). The status report used as a major source in support of this listing was prepared by Del Weniger, Department of Biology, Our Lady of the Lake University, San Antonio, Texas 78285.

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Common name	Scientific name	Known distribution	Portion endangered			
Cactaceae—Cactus Family:						
Tobusch fishhook cactus.	<i>Ancistrocactus tobuschii</i> .	U.S.A. (Tex.)	Entire	E	81	NA

Dated: November 1, 1979.

Robert S. Cook,
Acting Director, Fish and Wildlife Service.

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